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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARL LOVELL GILLIAM,

1:09-cv-01383-OWW-DLB (HC)

Petitioner,

FINDINGS AND RECOMMENDATION
REGARDING RESPONDENT’S MOTION TO
DISMISS PETITION

v.

[Doc. 9]

JAMES D. HARTLEY,

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

BACKGROUND

Petitioner filed the instant petition for writ of habeas corpus on August 7, 2009. (Court Doc. 1.) Respondent filed a motion to dismiss the petition on October 28, 2009. (Court Doc. 9.) Petitioner filed an opposition on November 12, 2009, and Respondent filed a reply on November 20, 2009. (Court Docs. 10, 11.)

DISCUSSION

A. Procedural Grounds for Summary Dismissal

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of

1 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
2 dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th
3 Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it
4 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v.
5 Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

6 B. Failure to State a Cognizable Federal Claim

7 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241
8 of Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner
9 unless he is "in custody in violation of the Constitution." 28 U.S.C. § 2254(a) states:

10 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall
11 entertain an application for a writ of habeas corpus in behalf of a person in
12 custody pursuant to a judgment of a State court *only on the ground that he is in*
custody in violation of the Constitution or laws or treaties of the United States.

13 (emphasis added). See also, Rule 1 to the Rules Governing Section 2254 Cases in the United
14 States District Court. The Supreme Court has held that "the essence of habeas corpus is an attack
15 by a person in custody upon the legality of that custody . . ." Preiser v. Rodriguez, 411 U.S. 475,
16 484 (1973).

17 Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner
18 must demonstrate that the adjudication of his claim in state court

19 resulted in a decision that was contrary to, or involved an unreasonable application
20 of, clearly established Federal law, as determined by the Supreme Court of the
21 United States; or resulted in a decision that was based on an unreasonable
22 determination of the facts in light of the evidence presented in the State court
23 proceeding.

24 28 U.S.C. § 2254(d)(1),(2).

25 Respondent argues that Petitioner has failed to state a cognizable federal claim. The
26 Court finds Respondent's argument to be correct, in part. In his Petition, Petitioner complains
27 that he received a serious Rules Violation Report for possession of drugs in violation of the
28 California Code of Regulations. He asserts that prison officials have not complied with their own
rules and regulations in rendering its decision. More specifically, Petitioner argues that the
regulations were violated because the controlled substance was not stored or tested. Petitioner

